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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,574	10/20/2003	Eric Owen Fehlberg	CRYECAL-14	8446
36528	7590	08/01/2006	EXAMINER	
STIENNON & STIENNON 612 W. MAIN ST., SUITE 201 P.O. BOX 1667 MADISON, WI 53701-1667			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/689,574	Applicant(s) FEHLBERG ET AL.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/20/03</u> . | 6) <input type="checkbox"/> Other: ____. |

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the angle in claims 5 and 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 1-4, and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Swetish (5954253), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Swetish '253. Swetish teaches a rigid back plate 18, a waist belt 96 positioned frontward of the back plate, a rigid waist plate formed by portions 86, and a cushion 20. with respect to the rigid waist plate being frictionally engaged with the rigid back plate. It is noted that prior to the engagement of portion 80 the rigid back plate and the waist plate engaged each other.

In the alternative, it would have been obvious to one of ordinary skill in the art to eliminate the attachment means 80 when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969). The elimination of the attachment means would allow the back plate and rigid back plate frictionally engaged as claimed.

Regarding claim 3, note the shell inside the pack and straps as shown in Fig. 2.

Regarding claim 4, it is noted that the friction surface is at least would be one of the group as set forth, i.e., highly texture mechanical structure material. Since the term “highly” is relative.

Regarding claim 5, note there is an angle between portion 32 and 36 would meet the claimed limitation.

Regarding claim 7, note the shell in Fig. 1.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swetish in view of Lowe (4860936) or Wickersham (4871102). Either Lowe, col. 4, ln. 65, or Wickersham, col. 3, ln. 58) teaches that it is known in the art to provide a base for a carrying device made from urethane, It would have been obvious to one of ordinary skill in the art to make the back plate and the waist plate from urethane plastic to provide the desired material.

4. Claims 5, 6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swetish ‘253. Official Notice is taken that it is known in the art to provide a back plate that is curved about the back surface. It would have been obvious to one of ordinary skill in the art to provide a curved back plate to provide enable one to wear the device comfortably. With respect to the angle, it would have been obvious to one of ordinary skill in the art to provide the angle as claimed to provide the desired angle for the back of the wearer.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
Art Unit 3727

